*** T H E H O N ' B L E S R I J**

+ W.P.No. 3532 of 2006

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P e t i t i o n e r

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$ The Asst. Commissioner,
Endowments,Vijayawada, Krishna district & Ors.
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R e s p o n d e n t s

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! C o u n s e l Sri M. Vijaykumar t i t i o

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? C A S E S R E F E R R E D : -

1. 2006 (1) ALD 705

IN THE HIGH OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(*Special Original Jurisdiction*)

MONDAY, THE ELEVENTH DAY OF SEPTEMBER
TWO THOUSAND AND SSEVEN

P R E S E N T

THE HON'BLE SRI JUSTICE P.S. NARAYANA

* * *

WRIT PETITION No.3 5 3 2 of 2006

Between:

Banda Raghavendra Rao … Petitioner

Versus

The Assistant Commissioner,
Endowments, Vijayawada,
Krishna District & Ors. … Respondents

Counsel for the Petitioner: **Sri M. Vijaya Kumar**

Counsel for the Respondents : **GP for Endowments**
Sri S.Shyamsunder Rao for R3

THE HONOURABLE SRI JUSTICE P. S. NARAYANA

WP.NO.3 5 3 2 of 2006

O R D E R

1. This Court issued Rule Nisi on 24-2-2006 and made the following order in WPMP.No.4397 of 2006:

> The petitioner claims to have legitimate rights to be recognized him as founder family member of Sri Kanakalingeswara swamy vari temple, Atapaka, Kailakuru Mandal, Krishna district. The third respondent submitted an application to the first respondent seeking his recognition as a member of the founder's family. By the impugned proceedings dated 15-2-2006, the first respondent recognized the third respondent as a member of the founder's family on the ground that he belongs to the fifth generation of the founder's family as against the petitioner, who is recorded as belonging to the sixth generation.
>
> The petitioner's complaint *inter alia* is that the first respondent is incompetent to exercise the powers or jurisdiction to resolve disputes as to the claims to being a member of the founder's family.
>
> Prima facie, Section 27 (h) of the AP Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act') introduced by the Amending Act 27 of 2002 w.e.f., 26-8-2002, consecrates the power of adjudicating disputes as to a member of the founder's family of an institution of endowments to the Deputy Commissioner having jurisdiction and in accordance with the procedure ordained in the provisions of the
> Act, in particular Section 87 of the Act. The first respondent is thus and prima facie seen to be incompetent to have adjudicated the dispute between the third respondent and the petitioner to the claim of being the member of the founder's family.
>
> For the aforesaid reasons, the impugned proceedings of the first respondent dated 15-2-2006 bearing reference D.Dis.No.A5/308/2006 Admn. Dated 15-2-2006 is suspended. Notice.

2. WVMP.No.704 of 2006 is filed by the vacate stay petitioner-R3 to vacate the interim stay made in WPMP.No.4397 of 2006 in WP.No.3532 of 2006, dated 24-2-2006.

3. The counsel on record made a request to dispose of the writ petition itself finally and at their request the writ petition is being disposed of finally.

4. The writ petition is filed for a writ of mandamus to declare the petitioner as the Founder Family Member of the second respondent-temple by declaring the proceedings of the first respondent in D.Dis.No.A5/308/2006, Admn., dated 15-2-2006 as arbitrary, illegal and violative of Article 14 of the Constitution of India, apart from the same being contrary to Section 87 (1) (h) of the Act 30 of 87 and to pass such other suitable orders.

5. It is stated by the writ petitioner that his great grand father late Banda Surapuraju constructed the second respondent-temple about 175 years back and had managed the same during his life time. He had also donated 21.49 acres of land for maintenance of the temple. As per the practice and the arrangement made, the eldest member of the family was managing the temple although. The petitioner belongs to the first son's genealogy branch of the founder of the temple and whereas the third respondent belongs

to the fourth son's branch of the genealogy of the founder of the temple. The temple is categorized as and published under section 6 (c) (ii) of the Endowments Act i.e., Act 30 of 87 and is under the administrative control of the first respondent.

6. While so, the petitioner had made an application dated 10-1-2006 and 07-2-2006 before the first respondent to recognize him as the founder family member for managing the temple. The third respondent also made similar application dated 02-1-2006 to recognize him as the founder family member for managing the temple. Both of them were asked by the first respondent to produce the documentary evidence to establish their right for recognition as founder family member. Both have submitted their documents including the genealogy tree to show their status. According to the petitioner, the third respondent rival claimant is much younger to the petitioner. However, the first respondent without looking at the evidence properly held that the petitioner belongs to 6th generation and the third respondent belongs to 5th generation vide Proceedings D.Dis.No.A5/308/2006, Admn. Dated 15-2-2006.

7. It is stated that once there are rival claims and there is a dispute the third respondent has no power to decide the dispute

with regard to the issue of founder family member. Under Section 87 (h) of the Act 30 of 87 the power is vested with the Deputy Commissioner. However, the first respondent for the reasons best known to him has decided the issue and issued Proceedings in D.Dis.No.A5/308/2006, Admn. Dated 15-2-2006 recognizing the third respondent. Immediately as an abundant caution, the said proceedings are questioned by the petitioner in OA.No.17 of 2006 before the fourth respondent, Dy.Commissioner of Endowments, Kakinada, the competent authority on 21-2-2006 to decide the present dispute. He also filed an application with a request to stay the operation of the orders dated 15-2-2006 of the first respondent. However, no orders are passed on the stay application filed by the petitioner. The petitioner reliably understand and believe that the third respondent is seeking to assume the charge on 24-2-2006 and if the same is allowed to take place, he will be put to great hardship and irreparable loss.

8. It is stated that as per practice the eldest member of the family is acting as managing trustee of the temple. However, due to some personal reasons the petitioner's paternal uncle could not manage the affairs and the same was entrusted to the

Endowments Department. As on today it is under the management of an Executive Officer of the Department. However, the first respondent without taking into consideration the practice in vogue which is also reduced into writing wayback in the year 1953 had passed orders contrary to the same, unless this court set aside the same, the petitioner will be put to great hardship and irreparable loss.

9. In the affidavit filed in support of the vacate stay application, WVMP.No.704 of 2006 in WPMP.No.4397 of 2006, it was stated that Banda Surappa Raju, who constructed the second respondent-temple about 175 years is related to the vacate petitioner-third respondent. It is also stated that the third respondent and the petitioner belong to Banda people. However, it is not true to say that as per the practice and the arrangement made, the eldest member of the family was managing the temple all through and that the first sons genealogy branch of the founder of the temple alone has been managing. There is no such arrangement. It is true that the temple is categorized as published under section 6 (c) of Endowment Act, 30 of 1987. It is also further stated by R3 that R3 si not aware of the applications made on 10-1-2006 and 07-2-2006 before the first respondent to

recognize as founder family member for managing the temple. This respondent also stated that the third respondent made an application to recognize as member of the founder trustee. The first respondent vide proceedings dated 15-2-2006 passed orders holding that the third respondent belongs to fifth generation, whereas the petitioner belongs to sixth generation and hence recognized as founder family member for management of the temple. Further specific stand had been taken that the contention that the first respondent has no jurisdiction to pass orders cannot be sustained and several other facts had been narrated.

10. In **G.RAJENDRANATH GOUND V/s. STATE OF ANDHRA PRADESH AND ORS**[1], while dealing with Section 87 (1) (h), 15, 17 (1) and 20 of A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 held that when a member or members of founder's family are not determined or declared, it is only Deputy Commissioner, who has to conduct enquiry and any other authority, be it Government, Commissioner of Endowments or Assistant Commissioner cannot have any jurisdiction to conduct such enquiry contemplated under section 87 (1) (h) of the Act. The learned Judge of this Court observed at para nos. 28, 29, 33 and also 35 as hereunder:

Reading Section 17 with appointment Rules, it becomes clear the nature of enquiry by the competent authority is only to see whether any aspirant incurs any disqualification and whether such a person is suitable and eligible for being appointed as trustee. The very nature of power exercised under Sections 15, 17 and 20 read with the relevant Rules would leave no doubt that the functions are purely of administrative in nature, no quasi judicial functions are involved. Indeed the Rules do not even contemplate issue of a notice before an application is rejected and the statute does not confer any right on any person for being appointed as a matter of right as trustee of a temple or institution. That is the reason why Explanation I under Section 17(1) employs the term "recognized" while dealing with preferential right of a person or a member of the founder's family. Explanation II employs terms "declared or recognized". Who "declares" that a person is founder or member of family of founder?

Section 87(1)(h) of the Act uses the phrase "to enquire into and decide any dispute as to the question whether a person is a founder or a member from the family of the founder of an institution or endowment". Therefore, the provision dealing with enquiries contemplates enquiry to decide the question as to whether a person is a founder of the institution or not, whereas the Explanation I to Section 17(1) of the Act employs the phrase "a person who has founded the institution and recognized as such by the competent authority" to be given preference in the appointment as a member of Board of Trustees. The distinction in the language employed is a clear indication that if the dispute arises as to who is the person or persons who are members of the family of the founder or a founder, the enquiry has to be necessarily conducted by the Deputy Commissioner of Endowments. At the time of appointment, unless and until such person who is determined and declared to be a founder or a member of the family of the founder, is declared or recognized as such founder or member of the founder's family, no purpose would be served. What is the scope of "recognition" at the time of appointment of Board of Trustees?

As noticed hereinabove the Explanation II to Section 17(1) of the Act describes children, grand children in agnatic line of succession as members of the family of the founder. The proviso to sub-section

(1) of Section 17 casts an obligation on the appointing authority to appoint either the founder or one of the members of the family of the founder to be trustees in the Board. Whereas Explanation I requires a founder or a member of the family of a founder to be 'recognised' by the appointing authority. To reconcile Section 87(1)(h) of the Act, which confers power on Deputy Commissioner to decide question as to who is member of the founder's family and Section 17(1) which empowers the appointing authority to 'recognise', one should adopt the contextual interpretation while interpreting both the provisions separately and should adopt harmonious construction of both the provisions to avoid any conflict. Doing so, this Court is of considered opinion that when there is a dispute among the members of the founder, as to who is or who are members of the founder's family, an enquiry has to be necessarily conducted by the Deputy Commissioner of Endowments under Section 87(1)(h) of the Act. In a situation where this exercise has already been completed either before the Judgment of the Supreme Court in **Pannalal Bansilal v State of A.P.,** (supra) or while the circular issued by the Commissioner of Endowments was in operation or before coming into force of the amended Section 87(1)(h), unless and until such person or persons are recognized by the appointing authority under Section 17(1) (under both the Explanations), no such person can be appointed as a member of the Board of Trustees. In the event of 'recognition' of all successors of the founder as members of the founder's family, it is for the appointing authority to recognize one of them subject to fulfilling the qualifications as one of the members of the family of the founder for being appointed as a trustee. Therefore, the conclusion is that when a member or members of the founder's family are not determined or declared, it is only the Deputy Commissioner who has to conduct enquiry and any competent authority – be it Government; Commissioner of Endowments or Deputy commissioner or Assistant Commissioner – cannot have any jurisdiction to conduct such enquiry contemplated under Section 87(1)(h) of the Act.

Before coming into force of 1987 Act, and after coming into force of 1987 Act, the petitioner herein filed applications being O.A.No.1 of 1997 (under Section 77(c)(c) of 1966 Act) and O.A.No.40 of 1997

(under Section 87(1)(e) of 1987 Act). No doubt, in the orders passed in these two original applications, there are certain observations made which might be construed as conferring some benefit on the petitioner. The fact is that so far no enquiry has been conducted by the competent authority i.e., Deputy Commissioner of Endowments or the Government before coming into force of the amendment to Section 87(1) or after coming into force of that provision. Therefore, in the background facts of this case, the notice of enquiry issued by the Commissioner is without jurisdiction and to that extent the submission of the petitioner's counsel commends itself to this Court. But the other submission that the Government alone should conduct enquiry to decide the question as to who among the four sons of Jagannath Goud is a question which squarely falls within the ambit of Section 87(1)(h) of the Act and therefore necessarily the jurisdictional Deputy Commissioner of Endowments alone has competence to decide the question. The order of this Court dated 03.08.2005 cannot be understood as directing an incompetent authority to conduct enquiry under Section 87(1)(h) of the Act.

In the result, for the above reasons, this Court declares that the Commissioner of Endowments is incompetent to conduct any enquiry under Section 87(1)(h) of the Act. He is therefore directed to send back the entire material including the applications made by the third respondent herein seeking recognition as a member of the founder's family, to the Deputy Commissioner of Endowments concerned immediately so as to enable the latter to complete the enquiry after giving notice to the rival claimants, within a period of six weeks from the date of receipt of a copy of this order.

10. In the light of the specific statutory provision which had been referred to supra, Section 87 (1) (h) of AP Charitable and Hindu Religious Institutions and Endowments Act, 1987, inasmuch as the order impugned order was made by the

Assistant Commissioner, Endowments, the first respondent, it is needless to say that the said order is without jurisdiction and accordingly the same is hereby quashed. However, the first respondent-Assistant Commissioner, Vijayawada, Krishna district to transmit all the records relating to the fourth respondent. The fourth respondent-Dy.Commissioner, Endowments, Kakinada, East Godavari district to consider the respective stands taken by the parties and decide the mater afresh in accordance with law.

11. Accordingly, with the above observation, the writ petition is hereby allowed to the extent indicated above. No costs.

JUSTICE P . S. NARAYANA .

11 / 9 / 2007

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[1]) 2006 (1) ALD-705